

ExecuTime Software, LLC  
1601 S Eucalyptus STE 210  
Broken Arrow, OK 74012



### ExecuTime SOFTWARE SUPPORT AGREEMENT COVER

This Support Agreement ("Agreement"), by and between **ExecuTime Software, LLC**, a Oklahoma limited liability company, hereinafter referred to as "ExecuTime," and the organization named below, hereinafter referred to as "Licensee":

City of Dearborn  
ORGANIZATION NAME

16901 Michigan Ave  
STREET ADDRESS

Dearborn, MI 48126  
CITY/STATE/ZIP

(313) 943-2175  
TELEPHONE NUMBER

This Support Agreement applies to the ExecuTime Time & Attendance and Advanced Scheduling Software Systems.

The Support Fee for the Licensed Software is \$ \$ 19,049.00

The Support Term is from 04/01/2016 to 03/31/2017  
(Commencement Date: Month of Installation) (Initial Term: 12 Months/Annually)

<u>Time &amp; Attendance</u>	<u>1500</u>
Licensed Software	Number of Employees
<u>Advanced Scheduling</u>	<u>500</u>
Licensed Software	Number of Employees



The LICENSEE acknowledges that it has read this Agreement, the terms and conditions of which are set forth on this page and in the ExecuTime Software, LLC Support Agreement Terms and Conditions Document attached hereto, and understands it and agrees to be bound by its terms and conditions. Further, the LICENSEE agrees that it is the complete and exclusive statement of the agreement between the parties which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

ExecuTime Software, LLC:

Kevin Malone  
Kevin Malone  
Manager

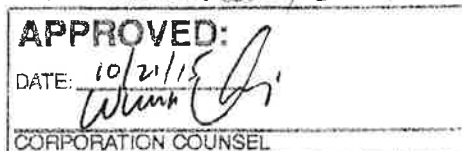
Date: 9-21-15

LICENSEE:

City of Dearborn  
By: [Signature]  
Name: DOUG FELDkamp  
Title: MIS DIRECTOR

Date: 10/22/15

As Authorized by CR # 10-509-15



**ExecuTime Software, LLC**  
**LICENSEE SUPPORT AGREEMENT TERMS AND CONDITIONS**

1. This Support Agreement will remain in force from the Commencement Date until the Support Termination Date and will then be automatically extended for annual periods at the current fees. The LICENSEE can terminate this Support Agreement at the end of any Support Period by returning the invoice without payment. (See paragraph 6 of this Support Agreement.) In addition, in the event the parties are unable to reach agreement as to a Solution Design, either party may, upon notice to the other party, terminate this Agreement without liability to the other party, as provided in the Purchase and Sale Agreement between the parties.
2. ExecuTime will provide LICENSEE Licensed Software Support during ExecuTime's normal working hours, Monday – Friday 7:00am – 6:00 pm (CST) on a first-in, first-out basis, based on problem severity. ExecuTime will:
  - (a) Provide at ExecuTime's option and on ExecuTime's schedule, periodic error correction and updates to the object code and/or user documentation of the product so as to bring installed applications to a level equivalent with that of the current marketed version of the Licensed Software.
  - (b) Clarify installation and operating instructions contained in the user documentation delivered with the Licensed Software.
  - (c) Assist in the identification of solutions to operating problems being experienced by the LICENSEE with the Licensed Software.
  - (d) Provide problem determination, investigation, and program error correction for verified program errors in the Licensed Software and the Payroll Interface at no additional charge to LICENSEE.
  - (e) Provide data repairs for LICENSEE files and records for data problems CAUSED BY the ExecuTime product at no additional charge to LICENSEE.
  - (f) Provide data repairs for LICENSEE files and records on a "best efforts" basis for data problems NOT CAUSED BY the ExecuTime product at ExecuTime's normal hourly billing rate, currently \$175.00 per hour.
  - (g) If LICENSEE has chosen the Premier Annual Support/Maintenance option, ExecuTime shall provide LICENSEE with Emergency support 24 hours per day, 7 days per week (excluding holidays), provided the call is initiated by one of up to three (3) persons previously designated by LICENSEE. "Emergency" shall be limited to an issue that renders the Licensed Software unusable (as determined by ExecuTime in its sole discretion). All other calls will be billed at ExecuTime's normal hourly billing rate, with a minimum charge of one hour.
3. ExecuTime includes in the category "data problems NOT CAUSED BY the ExecuTime product," data corruption or integrity problems caused by, but not limited to, the following:
  - (a) Equipment malfunction or failure.
  - (b) Failure by LICENSEE to follow procedures and/or instructions contained in the documentation provided with the product or in supplementary documentation provided by ExecuTime.
  - (c) Failure by LICENSEE to follow accepted operating practices (for example, failing to routinely prepare backup data files, powering off or interrupting equipment while programs are executing, etc.).
4. ExecuTime will take due care in responding to each request for LICENSEE Support to assure that the LICENSEE is making proper use of the Licensed Software and that the Licensed Software is operating properly. ExecuTime will use commercially reasonable efforts to locate and correct any identified Licensed Software program defects reported by the LICENSEE.

5. ExecuTime expressly excludes the following services from the Licensed Software Support to be provided under this Support Agreement:
  - (a) System configuration and implementation.
  - (b) Operator training.
  - (c) On-site training and LICENSEE assistance visits.
  - (d) Training classes.
  - (e) Licensed software custom modifications.
  - (f) Support of any licensed software product other than the one indicated herein.
6. Payment in full of the appropriate LICENSEE Support Fee shown above must accompany this Support Agreement and be received by ExecuTime prior to commencement of Licensed Software Support under this Support Agreement. An invoice for the applicable LICENSEE Support Fee will be submitted by ExecuTime to LICENSEE prior to the end of each annual renewal period. LICENSEE Support Fees will not increase by more than 5% on an annual basis. To cancel the annual renewal, LICENSEE must return the invoice indicating intent to discontinue within (30) days of receipt.
7. Reinstatement of this Support Agreement after having not been in force for sixty (60) days or less will be made with no reinstatement charge retroactive to the date that the Support Agreement was terminated.
8. ExecuTime's liability for damages to the LICENSEE for any cause whatsoever and regardless of the form of actions, whether in contract or in tort including negligence, shall be limited to any actual charges incurred for up to twelve (12) months' Support Fee for the Licensed Software indicated above. Such charges shall be those in effect for the Licensed Software when the cause of action arose.

In no event will ExecuTime be liable for any damages caused by the LICENSEE's representatives or for any lost revenues or other consequential damages, even if ExecuTime has been advised of the possibility of such damages, or for any claim against the LICENSEE by any party, except as otherwise agreed in the Agreement.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
9. Except as provided herein, neither this Support Agreement, the services granted hereunder nor any of the Licensed Software materials or copies thereof may be sub-licensed, assigned or transferred by the LICENSEE. Any attempt by LICENSEE to sub-license, assign or transfer any of the rights, duties or obligations under this Support Agreement are void without the written consent of ExecuTime, which consent will not be unreasonably withheld. Notwithstanding the foregoing, this Support Agreement, the services granted hereunder and the Licensed Software materials or copies thereof may be assigned by either party to any successor by reason of merger, reorganization, sale of all or substantially all of the assets, change of control or operation of law.
10. The terms and conditions of this Agreement may be modified by ExecuTime effective on the date of automatic renewal by providing the LICENSEE with one month's prior written notice. Any such modification will apply unless the LICENSEE exercises the option to terminate this Agreement.

Otherwise, this Agreement can only be modified by a written agreement duly signed by a person authorized to sign agreements on behalf of the LICENSEE and ExecuTime and variance from the terms and conditions of the Agreement in any LICENSEE order or other modification will be of no effect.
11. The LICENSEE represents that it is the Licensee of the Licensed Software under this Support Agreement via the Agreement effected directly with ExecuTime
12. ExecuTime's Licensed Software Support provided outside the scope of this Support Agreement will be furnished at ExecuTime's applicable time and material billing rates and terms then in effect.

13. Neither LICENSEE nor ExecuTime are responsible for failure to fulfill its obligations under this Agreement due to causes beyond either party's reasonable control.
14. No actions, regardless of form arising out of this Support Agreement may be brought by either party more than two (2) years after the cause of actions have arisen, or in the area of nonpayment, more than two (2) years from the date of the last payment.
15. Any action or proceeding seeking to enforce, or to construe or determine the validity of, any term or provision of this Support Agreement, or based on any right arising out of this Agreement, shall be brought by or against a party only in the District Court in and for the County of Wayne, State of Michigan or, if jurisdiction can be acquired, in the United States District Court for the Eastern District of Michigan, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.
16. This Support Agreement shall be governed by the laws of the State of Michigan both as to interpretation and performance.
17. If any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the state where made, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Support Agreement did not contain the particular part, term or provision that is held to be invalid.
18. ExecuTime and LICENSEE agree that this Agreement and the relationship it represents, requires the exchange of Confidential Information over the course of normal business. Confidential Information is information not generally known by non-party personnel including, but not limited to, the financial, marketing and other proprietary business information and LICENSEE's customer data.

ExecuTime and LICENSEE further agree that, except as expressly authorized in writing in advance by the other party, neither will copy or disclose Confidential Information to any third party except its agents, consultants, contracted personnel or employees on a need to know basis and the agents, consultants, contracted personnel or employees are under the same obligations of confidentiality as those imposed on the parties hereunder with no further rights of disclosure of Confidential Information.

Either party may use, copy, or disclose the Confidential Information to the extent required by any subpoena or order of any government authority, or otherwise as required by law, provided that the disclosing party shall give prompt notice to the other party of the circumstances.

ExecuTime Software, LLC  
636 E. Third St.  
Tulsa, OK 74120



## ExecuTime LICENSE AGREEMENT COVER

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City of Dearborn

ORGANIZATION NAME

16901 Michigan Ave

STREET ADDRESS

Dearborn, MI 48126

CITY/STATE/ZIP

(313) 943-2175

TELEPHONE NUMBER

This License Agreement applies to the ExecuTime Time & Attendance and Advanced Scheduling Software Systems.

Time & Attendance 1500

Licensed Software Number of Employees

Advanced Scheduling 500

Licensed Software Number of Employees

The LICENSEE acknowledges that it has read this Agreement, the terms and conditions of which are set forth on this page and in the ExecuTime License Agreement Terms and Conditions Document attached hereto, and understands it and agrees to be bound by its terms and conditions. Further, the LICENSEE agrees that it is the complete and exclusive statement of the agreement between the parties which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

ExecuTime:

ExecuTime Software, LLC

Kevin Malone

Kevin Malone  
Manager

Date:

8-7-15

LICENSEE:

City of Dearborn

By:

Name:

Title:

Date:

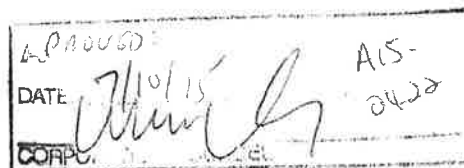
[Signature]

Doug Feldkamp

MIS DIRECTOR

10/22/15

As Authorized by CRB 10-509-15





**ExecuTime Software, LLC**  
**LICENSE AGREEMENT TERMS AND CONDITIONS**

**1. DEFINITIONS**

The term "Licensed Software" in this Agreement shall mean all licensed data processing programs consisting of instructions or statements in machine readable form and any related licensed materials such as, but not limited to, manuals, system documentation and written or verbal instructions provided for use in connection with the licensed data processing programs.

**2. TERM**

This Agreement is effective from the date on which it is accepted by ExecuTime and will remain in effect unless terminated as provided herein. In the event the parties are unable to reach agreement as to a Solution Design, either party may, upon notice to the other party, terminate this Agreement without liability to the other party, as provided in the Purchase and Sale Agreement between the parties. In addition, this Agreement may be terminated (a) by the LICENSEE, with or without cause, upon 30 days prior written notice to ExecuTime, or (b) by ExecuTime if the LICENSEE fails to comply with any of the material terms and conditions of this Agreement and fails to cure the default within 30 days after receipt of written notice stating the exact nature of the default. It is hereby agreed that upon termination of this Agreement for any reason, LICENSEE shall discontinue use of all Licensed Software and all Licensed Software shall be returned to ExecuTime.

**3. LICENSE**

(a) ExecuTime hereby grants to LICENSEE a License to use for each of the entities identified on the License Agreement Cover. Any attempt to sub-license, assign or transfer any of the rights, duties or obligations under this Agreement are void without written notification to and the consent of ExecuTime, which consent must not be unreasonably withheld.

(b) The License is transferable to a backup computer when the Designated Computer or an associated unit required for use of the Licensed Software is temporarily inoperable, but only until status is restored to the Designated Computer and processing on the backup computer is completed.

**4. WARRANTY AND LIMITATION OF LIABILITY**

(a) ExecuTime warrants that it has the right to market, distribute, support and maintain Licensed Software and that Licensed Software is warranted to conform to the operating specifications as outlined in the applicable software documentation. LICENSEE agrees that its SOLE AND EXCLUSIVE REMEDY is for ExecuTime to correct any error, malfunction or defect if the Licensed Software warranted hereunder fails to conform to the applicable operating specifications and LICENSEE advises ExecuTime of such failure in writing, during the three (3) month warranty period. The three (3) month warranty period starts the day after the date of the complete installation. If after reasonable attempts, ExecuTime is unable to correct the error, malfunction, or defect, LICENSEE shall be entitled to recover an amount, commensurate with the nature and magnitude of the error or defect, up to the entire amount paid for the Licensed Software. (For the purpose of this Agreement, the term "error, malfunction or defect" shall mean only significant material deviations from the operating specifications for the Licensed Software as set forth in the applicable software documentation issued by ExecuTime, that render the Licensed Software unusable.)

(b) ExecuTime represents, warrants and covenants that the Licensed Software delivered hereunder, including any upgrades or subsequent releases, shall contain no "Virus". "Virus" shall mean any computer code intentionally designed to disrupt, disable, harm or otherwise impede in any manner, including aesthetical disruptions or distortions, the operation of the computer program, or any other associated software, firmware, hardware or computer system.

(c) ExecuTime's liability for damages to the LICENSEE for any cause whatsoever, and regardless of the form of action, whether in contract or in tort including negligence, shall be limited to the amount paid for the Licensed Software. In no event will ExecuTime be liable for any damages caused by the LICENSEE's failure to perform the LICENSEE's responsibilities, or for any lost profits or other consequential damages, even if ExecuTime has been advised of the possibility of such damages.

(d) ExecuTime agrees to indemnify the LICENSEE against any loss and/or expenses, which may arise as a result of an alleged copyright or patent infringement by the licensed software of the copyright, patent, trademark, service mark, or other intellectual property of any third party.

(e) This warranty and liability for ExecuTime™ are void in the event that the Licensed Software is not being used with the Designated Computer.

(f) ExecuTime and/or Certified Marketing and Technical Associates will provide complete support services as outlined in the ExecuTime LICENSEE SUPPORT AGREEMENT TERMS AND CONDITIONS AGREEMENT.

(g) EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THERE ARE NO WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **5. PROTECTION AND SECURITY OF LICENSED SOFTWARE**

(a) LICENSEE agrees to use the Licensed Software only as provided herein and only during the term of License granted by ExecuTime and further agrees not to provide or otherwise make available any Licensed Software to any person other than LICENSEE's agents, consultants, contracted personnel or employees without prior written consent from ExecuTime, and then only on the condition that they acknowledge ExecuTime's statement that the Licensed Software or any part thereof is the property of ExecuTime and is proprietary to ExecuTime. LICENSEE also acknowledges ExecuTime's statement that the Licensed Software is the exclusive property of ExecuTime, constitutes trade secrets of ExecuTime, and agrees to protect the Licensed Software or any part thereof from unauthorized disclosure by its agents, consultants, contracted personnel, employees, LICENSEE, or successors. In the event the License granted hereunder is terminated, the above obligations of LICENSEE with respect to protection and security shall not terminate but shall continue for a period of five (5) years following such termination of License.

(b) LICENSEE agrees to reproduce and include ExecuTime's proprietary, copyright, and trade secret notice on any copies, in whole or in part, in any form, including partial copies and modifications of Licensed Software.

(c) The LICENSEE further agrees to take appropriate action, by instruction, Agreement or otherwise, with any persons permitted access to Licensed Software so as to enable the LICENSEE to satisfy the LICENSEE's obligation under this Agreement.

## **6. MODIFICATION OF LICENSED SOFTWARE**

The parties agree that LICENSEE shall have the right to modify any Licensed Software supplied by ExecuTime in machine readable form for LICENSEE's use under this Agreement and on the Designated Computer, and may combine such modified Licensed Software with other programs or material from updated work; provided however, upon discontinuance or termination of rights under this Agreement, the Licensed Software supplied by ExecuTime shall be completely removed from the updated work and all such materials and copies shall be returned to ExecuTime in accordance with the provisions of paragraph 8 of this Agreement. ExecuTime shall be under no obligation, however, to make revisions or releases compatible with Licensed Software which has custom modifications.

## **7. CANCELLATION OF LICENSE**

(a) The License granted hereunder may be canceled by ExecuTime if LICENSEE defaults in payment of any amount due under this Agreement for a period of fifteen (15) business days after notice of default, or may be canceled at any time upon breach by the LICENSEE of any other covenant of this Agreement if such breach is not corrected within thirty (30) business days after receipt of written notice thereof. LICENSEE's obligation to pay charges which have accrued and damages arising from its breach of this Agreement shall survive cancellation thereof. No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the other party shall alter or waive any rights or remedies.

(b) The parties agree that should either of them default in any of the covenants or agreements contained herein, the prevailing party shall be entitled to all costs and expenses including a reasonable attorney's fee which may arise or accrue from enforcing this Agreement in a court of law.

## **8. RETURN OF LICENSED SOFTWARE**

Within thirty (30) days after the termination or cancellation for any reason of the License granted herein, LICENSEE shall deliver to ExecuTime all copies thereof in whatever form, including partial copies which may have been modified by LICENSEE, and execute a letter so certifying. ExecuTime, LICENSEE may be permitted for a specified period thereafter to retain one copy of certain materials for record purposes.

## **9. CONFIDENTIALITY**

(a) ExecuTime and LICENSEE agree that this Agreement and the relationship it represents, requires the exchange of Confidential Information over the course of normal business. Confidential Information is information not generally known by non-party personnel including, but not limited to, the financial, marketing and other proprietary business information and LICENSEE's customer data.

(b) ExecuTime and LICENSEE further agree that, except as expressly authorized in writing in advance by the other party, neither of them will copy or disclose Confidential Information to any third party except its agents, consultants, contracted personnel or employees on a need to know basis and the agents, consultants, contracted personnel or employees are under the same obligations of confidentiality as those imposed on the parties hereunder with no further rights of disclosure of Confidential Information.

(c) Either party may use, copy, or disclose the Confidential Information to the extent required by any subpoena or order of any government authority, or otherwise as required by law, provided that the disclosing party shall give prompt notice to the other party of the circumstances.

## **10. UPGRADES**

(a) If LICENSEE has chosen the Premier Annual Support/Maintenance option, software for software version upgrades is free of charge. However, there is a charge for services on upgrades.

(b) If LICENSEE has chosen the Standard Annual Support/Maintenance option, there is a charge for both software and services.

## **11. GENERAL**

(a) This Agreement can be modified only by a written agreement duly signed by persons authorized to sign agreements on behalf of the LICENSEE and of ExecuTime and variance from the terms and conditions of this Agreement in any LICENSEE purchase order or other written notification will be of no effect.

(b) Neither LICENSEE nor ExecuTime is responsible for failure to fulfill their respective obligations under this Agreement due to causes beyond their control. No action, regardless of form, arising out of this Agreement may be brought by either party more than two years after the cause of action has arisen, or in the area of nonpayment, more than two years from the date of the last payment.

(c) Any action or proceeding seeking to enforce, or to construe or determine the validity of, any term or provision of this Support Agreement, or based on any right arising out of this Agreement, shall be brought by or against a party only in the District Court in and for the County of Wayne, State of Michigan or, if jurisdiction can be acquired, in the United States District Court for the Eastern District of Michigan, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. This Support Agreement shall be governed by the laws of the State of Michigan both as to interpretation and performance.

(e) If any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the state where made, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.